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7 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT  
 11 DISTRICT OF OREGON

13 BUSE TIMBER & SALES, INC., a	)	Civil No. CV 10-112-HA
Washington corporation,	)	
14	)	
Plaintiff,	)	
15	)	
v.	)	MOTION FOR ISSUANCE OF
16	)	PROVISIONAL PROCESS (WRIT OF
	)	ATTACHMENT)
NORTH PACIFIC GROUP, INC., an	)	
17 Oregon corporation, and EDWARD	)	Oral Argument Requested
HOSTMANN, INC., Receiver,	)	
18	)	
Defendants.	)	

19 Pursuant to Fed. R. Civ. P. 64 and ORCP 83 D and E and  
 20 ORCP 84 A(2) (a), plaintiff moves the Court for an Order requiring  
 21 defendants and all other persons claiming an interest in the  
 22 lumber plaintiff sold to defendant North Pacific Group, Inc.,  
 23 between December 2009 and January 2010 to appear and show cause  
 24 why provisional process should not issue against the property in  
 25 the form of Writ of Attachment.  
 26

Pursuant to Local Rule 7.1, plaintiff's counsel Scott W. Horngren conferred with the receiver Edward Hostmann, Inc.'s counsel Martin Meyers regarding payment of the outstanding balance owed to Buse Timber & Sales, Inc. or recovery of the lumber, this motion is opposed.

In addition to the Points and Authorities below, this motion is supported by the Court's records and files, including plaintiff's Complaint and the supporting declaration of Ron Smith, plaintiff's President and General Manager, filed herewith.

#### POINTS AND AUTHORITIES

Prejudgment attachment is allowed under ORCP 84 A(2) (a) in actions upon contract, expressed or implied, for the direct payment of money when the contract is unsecured. Attachment is available where favorable judgment is virtually certain and the movant has complied with the steps and procedures provided under ORCP 83. The primary requirement is that the entire claim be liquidated. State ex rel Bethke v. Bain, 193 Or. 688, 701 (1952). Attachment is an equitable remedy distinct from a reclamation under the Uniform Commercial Code. See In Re: Marin Motor Oil, Inc., 740 F.2d 220, 224 (3<sup>rd</sup> Cir. 1984) ("reclamation, on the other hand, is a separate remedy explicitly created by the U.C.C.C. to supplement a seller's right to other legal and equitable relief.").

Plaintiff's likelihood of prevailing on the merits in this action for breach of contract is virtually certain. Between December 2009 and January 2010, plaintiff sold defendant North Pacific Group, Inc., lumber of unique dimensions valued at

1 \$104,863.68. Sales were made under a total of ten (10) separate  
2 invoices, each requiring payment within 11 days. The last invoice  
3 was dated January 5, 2010, with a payment due on January 16, 2010.  
4 As of the date of filing, defendants have refused to pay any  
5 amount toward the sales, despite repeated requests and demands to  
6 do so.


7 Furthermore, plaintiff has learned that defendants have  
8 immediate plans to ship the unpaid lumber overseas for sale to an  
9 innocent purchaser which would place this property beyond the  
10 reach of plaintiff.

11 As further explained in the supporting declaration of  
12 Ron Smith, plaintiff has an immediate need to the proceeds for the  
13 sale of this lumber. Declaration of Ron Smith. The lumber  
14 industry is in the worst condition in decades and the loss of the  
15 \$104,863.68 will significantly harm the business. Id. at ¶ 12.

16 For the reasons set forth above, in plaintiff's  
17 Complaint, and the supporting declaration of Ron Smith, the Court  
18 should issue an Order requiring defendants and all other persons  
19 claiming an interest in the above property to appear and show  
20 cause why provisional process should not issue in the form of a  
21 Writ of Attachment. Alternatively, the Court should issue a  
22 temporary restraining order enjoining defendants from transferring  
23 the property out of state.

1 DATED this 3<sup>rd</sup> day of February, 2010.

2 HAGLUND KELLEY HORNGREN JONES & WILDER LLP

3  
4 By:  Scott W. Horngren

5 Scott W. Horngren OSB No. 88060

6 Shay S. Scott OSB No. 93421

7 Attorneys for Plaintiff

8 (503) 225-0777

9 Scott W. Horngren OSB No. 88060

10 Trial Attorney

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Motion for  
Issuance of Provisional Process on the following party(ies):

Martin Meyers  
Sussman Shank LLP  
1000 SW Broadway, Suite 1400  
Portland, OR 97205

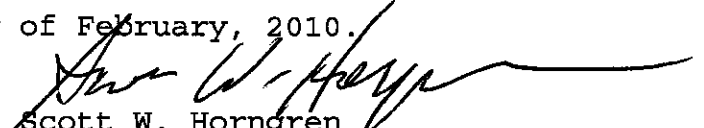
Attorney for Defendant Edward Hostmann, Inc.

George K. Fogg  
Perkins Coie, LLP  
1120 NW Couch Street, 10<sup>th</sup> Floor  
Portland, OR 97209

Attorney for Defendant North Pacific Group, Inc.

by mailing a true and correct copy thereof to said party(ies) on  
the date stated below.

DATED this 3rd day of February, 2010.

  
/s/ Scott W. Horngren

Scott W. Horngren OSB No. 88060  
Attorneys for Plaintiff